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C O N F I D E N T I A L SECTION 01 OF 02 TRIPOLI 000073

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SUBJECT: SWISS-LIBYAN WOES CONTINUE, NO RESOLUTION IN SIGHT

REF: A) 09 TRIPOLI 1024; B) TRIPOLI 58

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CLASSIFIED BY: Gene A. Cretz, Ambassador, U.S. Embassy Tripoli, Department of State.

REASON: 1.4 (b), (d)

¶1. (C/NF) Summary: In a January 19 meeting, the Swiss Charge reported no progress in Switzerland's continued efforts -- via German mediation -- to resolve the situation of the two Swiss businessmen trapped in Libya, now residing in the Swiss Embassy.

He believed the recent addition of a French lawyer, Emmanuel Altit -- who represented the five Bulgarian nurses and Palestinian doctor during their infamous Libyan trials -- to the Swiss' legal team could improve the situation. In response to Switzerland's continuing veto of numerous Schengen visas for Libyans, Libya is increasing the pressure on other European nations to isolate Switzerland and force it to capitulate, threatening to invoke a ban on visas on European travelers from Schengen states if Switzerland's policy does not change. End Summary.

LIBYANS POSTPONE TRIALS UNTIL SWISS APPEAR IN PERSON

¶2. (C/NF) Swiss Charge Stefano Lazzarotto reported no progress on Swiss efforts to resolve the situation of the two Swiss businessmen, Rachid Hamdani and Max Goeldi. According to Lazzarotto, the Libyan immigration court has twice postponed the appeals' trials in both cases, due to the refusal of Hamdani and Goeldi to appear in person at the hearing, as they are frightened of being re-arrested if they leave the premises of the Swiss Embassy. (Note: Hamdani did attend the postponed appeals' trial January 24 and was allowed to return to the Swiss Embassy. Additional details septel. End note.) The judge in the case reportedly does not want to conduct the hearings in absentia due to the stated purpose of wanting to hear from the defendants directly. The tax trials have been postponed for the same reason, with no new court dates set.

¶3. (C/NF) Lazzarotto reported that the businessmen had hired a second, French lawyer, Emmanuel Altit, to intervene. Altit -- who represented the five Bulgarian nurses and Palestinian doctor during their infamous Libyan trials -- met with Hamdani, Goeldi, and various Libyan officials during a recent five-day visit. Lazzarotto believed the addition of the French lawyer would improve the stalled situation, as the Libyan lawyer currently representing Hamdani and Goeldi, who is also the lawyer of Prime Minister-equivalent al-Baghdadi al-Mahmoudi's family, had come under increasing pressure to abandon the case. Lazzarotto indicated that the Libyan lawyer, due to his relationships and the Libyan environment, "could not be completely trusted."

GERMAN, QDF MEDIATION FOSTERING COMMUNICATION

¶4. (C/NF) The German government continues to mediate with the

Libyans on behalf of the Swiss, on both the judicial and political issues. The Swiss Charge characterized German mediation as a "positive development," saying, "at least the Libyans are now communicating with us, even if it is exclusively through the German government." The Germans have mediated two rounds of talks between the Swiss and the Libyans in Berlin, on December 22 and 28. Lazzarotto was hopeful that another round of talks would be scheduled in the near future.

¶5. (C/NF) According to Lazzarotto, Saif al-Islam's Qadhafi International Charity and Development Foundation (QDF) had been instrumental in arranging the first two meetings between the Libyans, Germans, and Swiss. The QDF had also attempted to negotiate a diplomatic solution to the political row, but Lazzarotto argued that the QDF's proposed compromise "included stipulations wherein the Swiss side would give several more things to the Libyans and the Libyans would do nothing." One of the stipulations encompassed charitable projects for Libyans, which Lazzarotto said the Swiss would be happy to do, "if we saw some progress on the Libyan side to settle the situation of our friends [Hamdani and Goeldi]."

¶6. (C/NF) Lazzarotto reported that the investigation tribunal, the formation of which had been stipulated in the August 20, 2009, memorandum of understanding (MOU) between the two nations (ref A), was an abandoned project, as both sides could not agree on the designation of a third party judge to sit on the tribunal. Since the September publication of Hannibal al-Qadhafi's arrest photos in Swiss newspapers, both sides had halted efforts to implement the MOU. The Libyans are still insisting that Switzerland identify and prosecute the source of the leaked photos, while the Swiss government maintains that many people had access to the photos and identification of the particular source of the leak is near impossible.

#### LIBYAN THREATS TO SCHENGEN STATES FURTHER ISOLATES SWITZERLAND

¶7. (C/NF) Lazzarotto said the Swiss continue to face pressure from other European nations on its unilateral "Schengen veto" policy on Libyans. Switzerland recently broadened the veto

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policy beyond Libyan diplomats, officials, and Qadhafi relations to include certain Libyan businesspeople and students seeking to travel to Europe. Lazzarotto explained that Switzerland was in no mood to compromise on its visa policy. "No regular Swiss citizen has been allowed to apply for a visa to Libya since July 2008," he reasoned. "Why should we not apply the same regulations to Libyans?" He further justified Switzerland's position by stating that the Schengen veto is the only way that Switzerland can control Libyan access to Switzerland. "If a Libyan has a Schengen visa, he could easily travel to Switzerland without our permission." Reasoning that the veto is not the end of the world for Libyan travelers to Europe, he pointed to the ability of each Schengen member nation to grant national visas to Libyan citizens; although he acknowledged the Libyan complaint that they have to apply for separate visas for each country in the Schengen zone that they want to visit.

¶8. (C/NF) As reported in ref B, the Libyans have amped up their pressure on EU nations, threatening not to issue visas to Schengen visa states if the Swiss do not change their policy of vetoing Schengen visas for Libyans. Lazzarotto expected European capitals to demarche Bern on the topic and said that he faced constant criticism in Tripoli when meeting with European embassy representatives. However, due to Schengen regulations, he noted that other member states could not force Switzerland to capitulate to Libya's demands.

#### COMMENT

¶9. (C/NF) In spite of the intervention of Germany, the political contretemps between Switzerland and Libya shows no signs of resolution in the near future. Until the ultimate Libyan decision-maker is satisfied that Switzerland has paid sufficient retribution for embarrassing a member of the Qadhafi clan, the

row is likely to continue. Libya's latest threat to freeze visa issuance for Europeans is serving to further intensify the situation, but at this point, is unlikely to affect the Swiss position.

CRETZ